

The County Court Judge, in term, had jurisdiction, under Rule 615, to direct the proper judgment upon the evidence to be entered, for he had before him all the materials necessary to finally determine the questions in dispute.

W. C. McKay, for the plaintiff. *Mulvey*, for the defendant Wherry.

Falconbridge, J., Street, J.] IN RE SOLICITORS. [August 3.
Solicitor—Retainer—Joint or several—Severance of defence—Apportionment of costs.

Notwithstanding that the retainer of a solicitor by two persons is in form a joint one, the court will look into the facts of the case to discover the real nature of the transaction, and will determine the rights of the solicitor and clients accordingly; such a retainer does not necessarily make the persons signing it joint debtors to the solicitor to whom it was given, but it may be taken distributively. And, upon the facts of this case, the client whom the solicitor sought to charge with the whole costs of the defence to an action conducted up to a certain stage jointly on behalf of this client and another, two of the defendants in the action, and afterwards on behalf of this client alone, and by a new solicitor on behalf of the other, was held liable for only one half of the joint costs during the time that the two clients were represented by the same solicitor, but thereafter for the whole of the costs reasonably and properly incurred by such solicitor.

Aylesworth, Q.C., for the solicitors. *J. E. Jones*, for Jane S. Fletcher.

Falconbridge, J., Street, J.] CROSS v. CLEARY. [August 5.
Contract—Specific performance—Agreement to bequeath estate—Remuneration for maintenance—Implied promise—Annual payments—Arrears—Statute of Limitations.

The plaintiff sought to recover from the executors of the will of a deceased person the whole of his estate, upon the strength of a verbal agreement which she alleged was made between her and the deceased. Her evidence was that he said: "You give me a home as long as I live, and when I die you have what is left;" to which she answered "all right;" and he then said, "That is an agreement." The same story was repeated by the daughter and son-in-law of the plaintiff, who said they were present when the agreement was made. Two other witnesses swore that the deceased told them that he had agreed to leave the plaintiff his property when he died. He was maintained by her for eight years after the alleged agreement was made, but made his will in favour of other persons.

Held, that, apart from the Statute of Frauds, the evidence was not such as the court could act upon by decreeing specific performance of the alleged agreement in substitution for the actual will of the deceased, duly executed, and admitted to probate without objection from the plaintiff or anyone else. Such an agreement must be supported by evidence leaving upon the mind of the Court as little doubt as if a properly executed will had been produced and proved before it.